



GARY S. HANN, pro se  
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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE

IN RE HANN, GARY S.  
Debtor.

Case No. 6:14-bk-22067-MW

Chapter 7

GARY S. HANN,  
PLAINTIFF,  
VS.  
STATE OF MICHIGAN DEPARTMENT OF  
TREASURY,  
Defendant.

Adv. No. 6:15-ap-01006-MW

TIMELY MOTION FOR RELIEF AND/OR  
TO ALTER OR AMEND THE COURT'S  
MARCH 26, 2015 ORDER DISMISSING  
ADVERSARY PROCEEDING

JUNE 25, 2015 AT 9:00 AM, VIDEO  
HEARING ROOM 225, 3420 12TH  
STREET, RIVERSIDE, CA 92501

JURY TRIAL DEMANDED

1 TO THE HONORABLE MARK S. WALLACE, UNITED STATES  
2 BANKRUPTCY JUDGE, AND ALL INTERESTED PARTIES:  
3  
4

5 Now comes Debtor and Adversary Plaintiff Gary S. Hann,  
6 who continues to demand a jury trial and who deposes and says as  
7 follows:  
8

9 THIS MOTION IS TIMELY UNDER RULES 59(b) and 60(b)  
10

11 1. The Court's March 26, 2015 Order Dismissing Adversary  
12 Proceeding was entered on March 26, 2015 and served by E-mail.

13 2. Fed.R.Civ.P. Rule 59(b) requires that a Motion to Alter  
14 or Amend be filed within 10 days; Rule 60(b) permits filing within  
15 a reasonable time period.

16 3. However, Fed.R.Civ.P. Rule 6(a) declares that, when the  
17 "period of time prescribed is less than 11 days", intermediate  
18 weekends and holidays are excluded. This would normally mean that  
19 this Motion was due on April 9, 2015.  
20

21 4. Further, though, Fed.R.Civ.P. Rule 6(e) also requires  
22 adding 3 days when service was made by E-mail, as here. Debtor  
23 Hann believes the deadline would thus nominally be Sunday, April  
24 12, 2015, defaulting to the next business day the Court is open,  
25 Monday, April 13, 2015.  
26  
27  
28



1 applicable to this matter where, in properly scheduled Adversary  
2 Actions, there may be full restitution to Creditors.

3 9. This is a non-core proceeding and Plaintiff Hann does not  
4 consent to entry of final orders or judgment by this Court due to  
5 his jury demand; Plaintiff Hann asserts standing to recover amounts  
6 due him for properly scheduled, preexisting civil proceeding  
7 claims; Trustee Anderson has now been notified of, and is currently  
8 considering, this and other of Plaintiff Hann's civil claims on  
9 their merits.  
10

11 10. Trustee Anderson has verbally agreed to opine on the  
12 merits of Plaintiff Hann's proposed Adversary Actions when he  
13 reaches a determination of their likelihood of recovering funds  
14 for distribution to the legitimate Creditors herein.  
15

16  
17 DEBTOR HANN'S PURPORTED FAILURE TO APPEAR AT STATUS CONFERENCE  
18

19 11. On March 26, 2015, Debtor Hann diligently left home with  
20 a half-hour to spare, leaving plenty of time to arrive at the  
21 Court; an unexpected traffic accident on the highway slowed Hann  
22 considerably.

23 12. Nevertheless, Debtor Hann arrived at the door of  
24 Courtroom 225 at 9:10 AM on March 26, well within limits generally  
25 set by Judicial Forums to accommodate arrival issues not that fault  
26 of the party involved.  
27

1       13. When Debtor Hann arrived, the Courtroom was locked  
2 tightly shut and nobody at all was present anywhere.

3       14. Defendant Counsel never informed Debtor Hann that Counsel  
4 has made prior plans to appear by telephone, and Defendant Counsel  
5 never contacted Plaintiff Hann until the 11<sup>th</sup> hour the day before  
6 the Hearing, despite the requirement to have a Rule 26(f)  
7 Conference at least 21 days in advance of the Hearing. Debtor  
8 Hann could have also taken advantage of telephone appearance had  
9 he been advised of the procedure.  
10

11       15. It would be a Manifest Injustice to deny Debtor Hann his  
12 proper day in Court to address the great and continuing default of  
13 Defendant Michigan Department of Treasury herein.  
14

15  
16               MERITORIOUS GROUNDS UNDER RULES 59(e) and 60(b)

17       16. To grant relief, Fed.R.Civ.P. Rule 59(e) requires any  
18 of a manifest injustice, new evidence, and/or a legal  
19 misapprehension. All of these conditions, any one of which the  
20 Court at its discretion can cite to grant relief, have been pled  
21 and shown, supra.  
22

23       17. Rule 60(b) permits relief for (1) mistake, inadvertence,  
24 surprise, excusable neglect, or (6) for any other reason justifying  
25 relief from the operation of the judgment.  
26  
27  
28

1 18. There is no doubt that Debtor Hann was surprised, even  
2 astonished to be disenfranchised by an arrival at Court a mere 10  
3 minutes after the scheduled Hearing, certainly constituting  
4 excusable neglect.  
5

6 19. Further, Debtor Hann was surprised, to say the least, at  
7 the Court's own unnoticed Motion that it lacked subject matter  
8 jurisdiction. Normally, even seasoned counsel have some prior  
9 notice to prepare a basis for objecting to a motion; here, Debtor  
10 Hann in pro se had none whatever.  
11

12 20. Debtor Hann was further highly surprised by the Court's  
13 own unnoticed Motion that Hann lacked standing to file and pursue  
14 an adversary action. Part 7 of the Federal Rules of Bankruptcy  
15 Procedure govern adversary proceedings and make no reference  
16 whatever to any need to consult or advise the Trustee of an action.  
17

18 21. The Court's Motion and determination regarding standing  
19 may have been based on the appearance that Debtor Hann was only  
20 seeking funds from one or two smaller adversary defendants.

21 22. However, Debtor Hann's Schedule B - Personal Property,  
22 No. 21 clearly lists several important claims, and at the time of  
23 filing the value of these claims was not determinable. Further,  
24 Schedule C also lists these causes of action and in listing an  
25 exemption of only \$10,587.  
26  
27  
28

1        23. The availability of claims in excess or in great excess  
2 of \$10,587 absolutely do become distributable property of the  
3 Bankruptcy Estate, a fact of which the Court was not fully advised  
4 at the time it issued its Order.

5  
6        24. Debtor Hann has now taken pains to consult Trustee  
7 Anderson, and has been referred by the Trustee to an independent  
8 counsel Mr. Tom Polis, who will assist Trustee Anderson in  
9 evaluating Debtor Hann's significant adversary claims herein.

10        25. Consulting and advising the Trustee takes time and  
11 several sets of eyes; Debtor Hann believes that he can further the  
12 proper administration of justice and very possibly make all  
13 legitimate Creditors herein whole, thus exceeding the bar for  
14 relief set by Rule 60(b)(6).

15  
16  
17                    MORE DEFINITE STATEMENT OF CAUSE OF ACTION  
18

19        26. Debtor Hann will respectfully seek the opportunity to  
20 provide a more definite Complaint in this particular proceeding,  
21 as provided in Fed.R.Civ.P. Rule 15.

22        26. Defendant Michigan Department of Treasury has a Void  
23 Judgment against Debtor Hann, obtained in open and hostile  
24 violation of Debtor Hann's basic constitutional right to Due  
25 Process.  
26

1 27. Nobody, particularly the State, has any authority to  
2 enter a judgment without providing the party an opportunity to be  
3 heard, and that denial, plus a clearly erroneous legal conclusion  
4 contrary to all settled legal opinion, was used by the State to  
5 cause great and continuing harm to Debtor and Adversary Plaintiff  
6 Hann.  
7

8  
9  
10 RELIEF REQUESTED

11 28. Debtor and Adversary Plaintiff Hann hereby requests that  
12 this Honorable Court forthwith find and order that:

- 13 a) Debtor Hann is excused for being but 10 minutes late  
14 to the Status Conference herein.
- 15 b) Debtor Hann is granted an opportunity to respond to  
16 the Court's unnoticed Motions made on March 26, 2015.
- 17 c) Debtors Hann's Answers to the Court's Motions on  
18 Jurisdiction, Standing and Abandonment are  
19 meritorious.
- 20 d) The Court's March 26, 2015 Order Dismissing Adversary  
21 Proceeding is hereby set aside pending the opinion of  
22 Trustee Anderson on the potential for recovering funds  
23 for the Bankruptcy Estate in excess of the Exemptions  
24 scheduled by Debtor Hann.

25 Dated this 2nd of June, 2015.

26  
27  
28  
  
\_\_\_\_\_  
Gary S. Hann, Debtor



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

P.O. Box 711

Cathedral City, CA 92235-0711

A true and correct copy of the foregoing document entitled (*specify*): Re-Service of Motion for Relief and/or to Alter or Amend and Notice of Motion

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 06/02/2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Adversary Defendant Michigan Department of Treasury: Adam P. Sadowski, Assistant Attorney General, MI

Department of Attorney General, P.O. Box 30754, Lansing, MI 48909

Clerk: 3420 12th Street, Riverside, CA 92501

Judge Wallace: 3420 12th Street, Riverside, CA 92501

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

06/02/2015 Nicholas Altman

Date

Printed Name

Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.